

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

To Be Argued By
JAY GOLDBERG

ORIGINAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

75-1130

UNITED STATES OF AMERICA,

Appellant,

-against-

PHILIP CRISPINO,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE DEFENDANT-APPELLEE

JAY GOLDBERG
Attorney for Defendant-
Appellee
Office & P. O. Address
299 Broadway
New York, New York 10007
Telephone: (212) 374-1040

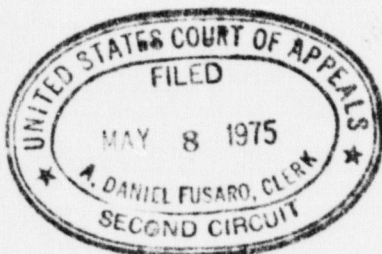


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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-1130

UNITED STATES OF AMERICA,

Appellant.

vs.

PHILIP CRISPINO,

Defendant-Appellee.

BRIEF FOR THE DEFENDANT-APPELLEE

PRELIMINARY STATEMENT

The Government appeals from an Order entered on February 13, 1975, in the Southern District of New York, by the Honorable Henry F. Werker, United States District Judge, granting a motion to dismiss the indictment by defendant-appellee Philip Crispino and from an Order entered on March 24, 1975, in the Southern District of New York, by Judge Werker, denying a motion for reconsideration by the Government.

Indictment 74 Cr. 932, filed October 1, 1974, charged defendant in two counts, with violations of the Extortionate Credit Transaction Act (Title 18, United States Code, Section 894), and the Hobbs Act (Title 18, United States Code, Section 1951).

STATEMENT OF FACTS

On January 24, 1975, defendant filed a motion to dismiss (Rule 12(b)(2), Federal Rules of Criminal Procedure) the indictment, on the ground that Charles E. Padgett, a Special Attorney with the Organized Crime and Racketeering Section of the Criminal Division, United States Department of Justice, who had presented the case to the grand jury was not authorized to appear before the grand jury. On February 13, 1975, after reviewing memoranda submitted by the Government in opposition to the motion, Judge Werker granted the motion and dismissed the indictment on the ground that Mr. Padgett was not authorized to appear before the grand jury.

On March 6, 1975 the Government filed a motion for reconsideration of the Order dismissing the indictment. On March 25, 1975 Judge Werker denied the motion.

Appellee agrees to be bound by the panel holdings in In re Persico, Dkt - 75-2030 and In re Di Bella, Dkt - 75-1121 insofar as this issue is disposed of on the merits.

ARGUMENT

POINT I

28 USC 515(a) CONTROLS AND LIMITS THE
BROAD POWERS VESTED IN THE ATTORNEY
GENERAL BY 28 USC 509 and 510.

The appellee can not and of course does not contest the broad power of the Attorney General to conduct criminal litigation. The issue in the matter at bar is whether there are any limits to this power. And in the course thereof, whether the terms "specially appointed" and "specifically directed" are to be given any importance. Judge Werker's analysis, as well as that of Judge Oliver, leave little room for doubt that:

- (a) Congress intended to put limits on the power (A 18-20, 33, 48 see also A 7);
- (b) Apparently in recognition thereof, the practice of a number of Attorneys General for more than

50 years had been to make the commission letter as specific as possible (A 32);

(c) Courts have construed 515(a) as properly limiting the otherwise broad power of the Attorney General (A 21-26)

POINT II

THE APPOINTMENT IN THIS CASE DID NOT
COMPLY WITH 28 USC 515(a)

The broadly worded letter of appointment did not conform to the Congressional limitations on the Attorney General's otherwise broad power over criminal litigation (A 29-31)

POINT III

THE DEFENDANT PROPERLY MOVED AGAINST
AN INDICTMENT WHERE AN UNAUTHORIZED
PERSON WAS PRESENT DURING THE GRAND
JURY SESSIONS

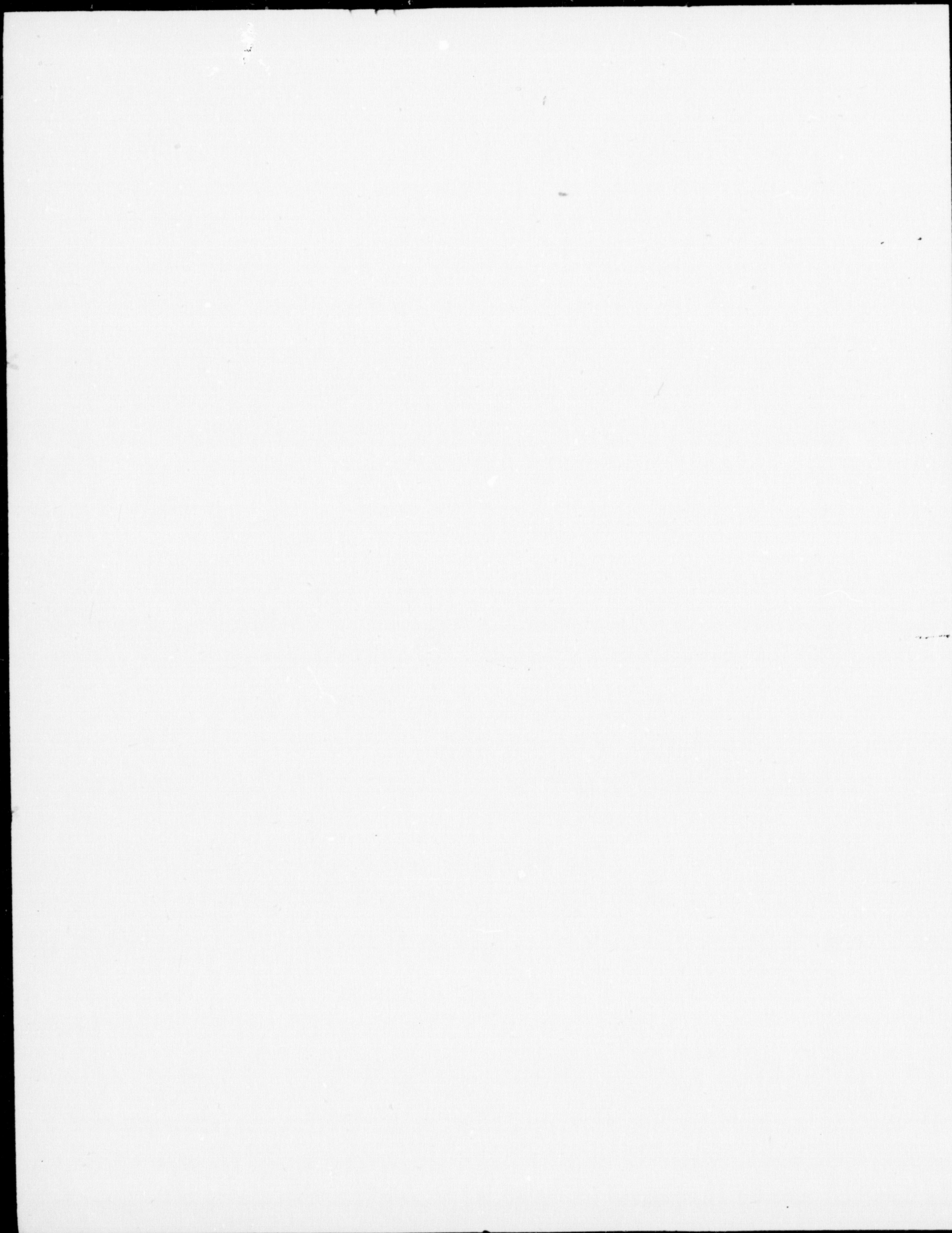
The unauthorized appearance of a person before a Grand Jury warrants dismissal of the indictment (A 34). Mr. Padgett's appointment was not in conformity with 28 USC 515(a) and as a result, he was an unauthorized person.

CONCLUSION

The orders of the District Court should be affirmed.

Respectfully submitted,

JAY GOLDBERG
Attorney for Defendant-Appellee.



Rec'd 5/3/75
by M. Costner
SD NY